## Kennedy, Debora

**From:** on behalf of Debora Kennedy
**To:** bjabramson@wisc.edu
**Subject:** Health care powers of attorney and durable powers of attorney; chapter 880 revisions

In the bill, under s. 54.46 (2) (b) and (c), I left ****Notes that indicated that it might be necessary to amend provisions in chs. 155 and 243 to conform to the bill's requirements. When I compared the provisions in current law and those proposed in the bill, several issues came up, which I think will need review and decisions by the committee. Here are the problems:

HEALTH CARE POWER OF ATTORNEY

In the bill, s. 54.46 (2) (b) (s. 880.33 (8) (b), stats., as renumbered and amended) requires a health care power of attorney executed by a ward to remain in effect unless a court for good cause revokes or limits the health care power of attorney.

Under current law:

(a) Section 155.60 (2), stats., REVOKES a health care power of attorney for an individual who is determined to be incompetent UNLESS the court finds that it must remain in effect.

(b) This provision also states that, if the court finds that the health care power of attorney should remain in effect, the guardian, if not the health care agent, may NOT make health care decisions for the ward.

(c) Section 155.05 (1), stats., states that an individual for whom an adjudication of incompetence and appointment of a guardian of the person is in effect under ch. 880 is presumed not to be of sound mind for purposes of executing a power of attorney for health care.

QUESTIONS:

1. With respect to (a), which version do you want, that in the bill or that in current law?

2. Do you want to keep or repeal (b)? If the former, it will be necessary to qualify both the duties and powers of a guardian of the person under s. 54.25 (1) and (2) in the bill.

3. With respect to (c), I think it would be best to clarify in s. 54.46 (2) (b) that the execution by the ward of a health care power of attorney occurred before a determination of incompetency was made. Okay?

DURABLE POWER OF ATTORNEY

In the bill, s. 54.46 (2) (c), as created, requires any durable power of attorney executed by a proposed ward to remain in effect unless a court, for good cause shown, revokes or limits the power of an agent under the terms of the durable power of attonrey.

Also in the bill, s. 54.15 (2), as created, requires that the principal's agent be appointed as guardian unless the court finds that the appointment is not in the proposed ward's best interests.

Under current law:

(a) Section 243.07 (3) (a), stats., grants to the GUARDIAN OR CONSERVATOR the power to revoke or amend the durable power of attorney UNLESS a court finds that the durable power of attorney should remain in effect.

(b) This provision also states that the agent under a durable power of attorney is accountable to both the guardian and to the principal.

(c) Section 243.07 (3) (b), stats., REQUIRES a court to appoint any guardian nominated by a principal in his or her durable power of attorney, except for good cause or disqualification. (The nominated guardian may, of course, be different from the agent.)

QUESTIONS

1. With respect to (a), which version do you want, that in the bill or that in current law?

2. Do you want to keep or repeal (b)?

3. Do you want to keep or repeal (c)? If the former, it will be necessary to qualify s. 54.15 (2) accordingly.

Any changes to either the health care power of attorney statutes or the durable power of attorney statutes will have to be accompanied by an initial applicability provision in the nonstatutory provisions that clarifies that these changes first apply to a health care power of attorney or a durable power of attorney that is executed on a particular date (usually, the effective date of the bill).

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## Kennedy, Debora

**From:** BETSY J ABRAMSON [bjabramson@wisc.edu]
**Sent:** Sunday, November 21, 2004 3:40 PM
**To:** beckerhickey_bjb@sbcglobal.net; bhughes@hill-law-firm.com; jjaeger@mailbag.com; tammi@execpc.com; dsybell@wisbar.org
**Cc:** Kennedy, Debora
**Subject:** Guardianship Reform - and again.

**Importance:** High

Hey friends:
Spent the last couple days reviewing your comments from the 11/05/04 meeting I had to miss and getting the draft ready to go back to Debora. There are a few things (really, just a few) I need to ask you all about, or ask you to ask others:

p. 18 - Question about RPPT. Could any of you answer this? Or could I ask Barb H or Jim J to contact the RPPT folks and ask them?

pps. 21, 65 and 69 - could Barb H or Jim J ask Theresa Roetter to give us respones to those?

pp.96-109 - all about psychotropic meds. I'm going to ask Dianne Greenely to review this carefully.

p. 112 - ALL OF YOU - what's your thoughts on Debora's qu3estions under 814.66(1)(n)?

Finally, Debora sent me a long e-mail on 10/19/04 about possible changes needed in the powers of attorney law (chs. 243 and 155), based on our change to the presumption in poahc (that the poahc remains in effect UNLESS court finds it in best interests to retain it if appoints a guardian) and various issues related to dpoa as well. Could I please have a little chatter on that? In case you lost that e-mail, I'll re-send it.

In the meantime, I'm going to package together what I do have and send it all off to Debora tomorrow, even with the missing answers. Finally, may I send this draft on both to Susan Podebradsky (I'm assuming YES) and Brian Purtell (counsel for the for-profit nursing homes) who have asked to see this. I would send them HARD copies of the draft with my pencilled in changes for Debora and flagged remaining questions, all due to your 11/05/04 hard work.

Thanks all. Have a great Thanksgiving. Bets

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## Kennedy, Debora

**From:** Kennedy, Debora

**Sent:** Monday, November 22, 2004 9:03 AM

**To:** 'Betsy Abramson'

**Subject:** RE: Guardianship statute update: from Theresa Roetter

Theresa Roetter indicates that "No where ..[except in the definition of "guardian"] is it clear that "care, custody and control" are vested in the guardian." She also indicates that "Law enforcement is never clear on what rights are transferred to the guardian." Two things may be of help:

1. The substantive powers of a guardian should not be in a definition in the first place, and certainly should not only be there.

2. The substantive powers of a guardian should be clearly laid out where the powers of the guardian are specified, either in the general powers of a guardian or in the more specific powers of the guardian of the estate and the guardian of the person.

I suspect that the equivalent of "care, custody, and control" is specified in the powers of the guardian, guardian of the estate, and guardian of the person in the draft. Has she seen these provisions? If, however, those words are considered, in addition, to be essential, I should think it would be possible to include them in a provision that is introductory to the specific powers.

-----Original Message-----
**From:** Betsy Abramson [mailto:abramson@mailbag.com]
**Sent:** Sunday, November 21, 2004 3:38 PM
**To:** Kennedy, Debora
**Subject:** Fw: Guardianship statute update: from Theresa Roetter

Oy! Bets

----- Original Message -----
**From:** Barbara S. Hughes
**To:** Betsy J. Abramson ; Betsy Abramson ; beckerhickey_bjb@sbcglobal.net ; tammi@execpc.com
**Sent:** Thursday, November 04, 2004 3:59 PM
**Subject:** FW: Guardianship statute update: from Theresa Roetter

-----Original Message-----
**From:** Theresa L. Roetter
**Sent:** Thursday, November 04, 2004 3:49 PM
**To:** Barbara S. Hughes; Jim A. Jaeger
**Subject:** Guardianship statute update

I mentioned this to Barb yesterday but wanted to follow up with an email as she requested. It has come to my attention that the definitions section of the guardianship statutes will be revised as part of the overhaul. In general that's probably a great idea, but I'm concerned (as are others in children's law circles) that a revised definition will hurt a court's ability to define what it means for someone to be the guardian of a child.

Currently, "guardian" is defined as one with "care, custody and control" of the ward. For children, this is important wording. No where else is it clear that "care, custody and control" are vested in the guardian. The form orders certainly don't say that. (We wish they would.)

This is part of the problem citizens have in enforcing guardianships. Law enforcement is never clear on what rights are transferred to the guardian.

After my presentation to the Joint Legislative Council there were many concerns expressed about the focus

of the current guardianship statues on the elderly. While I'm certain that your committee's revisions will make things better for the elderly/incompetent and disabled, many people are concerned that the revised statutes will create an even deeper divide between juvenile guardianships and elderly/disabled/incompetent cases.

As you know, Children & The Law Section only reviewed a small number of the proposed revisions. I know that we had identified one place where your committee removed the word "custody" and you were willing to put it back into the statute after we squawked.

Frankly, I think the ultimate answer is a separate juvenile guardianship statue. Joint Leg. Council is considering that option but I fear your statutory revision will get enacted before that happens and children might lose out.

- Theresa

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## Kennedy, Debora

**From:** on behalf of Debora Kennedy
**To:** bjabramson@wisc.edu; jjaeger@mailbag.com
**Subject:** Guardianship bill additions

05-0027 X-refs

Please refer to my next e-mail for an explanation of the document that is attached.

Debora A. Kennedy
Managing Attorney
Legislative Reference Bureau
(608) 266-0137
debora.kennedy@legis.state.wi.us

## Kennedy, Debora

**From:** on behalf of Debora Kennedy
**To:** bjabramson@wisc.edu; jjaeger@mailbag.com
**Subject:** Guardianship bill additions

By separate e-mail I have just sent you a series of statutes and some nonstatutory provisons. Please ignore the "INSERT" directions that are printed in bold --I use them to tell me where to fit the statutes into the bill, but they're unimportant for you right now. I have included ****NOTES under provisions about which I had questions.

CROSS-REFERENCES

The attached amended statutes fall into the following categories:

1. Those with cross-references that must be renumbered or otherwise dealt with because of the renumbering or repealing of statutes under ch. 880 in the bill. For statutes that refer to "ch. 880," I have not simply changed the reference to "ch. 54," because some statutes involve individuals who were adjudicated incompetent or guardians who were appointed before passage of the bill and for whom the ch. 880 adjudications will have continuing applicability. In general, I have made these differing drafting decisions, depending on the statute:

a. Retained reference to "ch. 880, 2003 stats.," as well as amending in reference to ch. 54.

b. Deleted reference to the chapter and, instead, referred, for example, to "guardianship proceedings in this state." This seems to work for many statutes that concern adults; however, because guardians may be appointed for minors under ch. 48, it is sometimes necessary to have reference to all three chapters.

c. Changed the current cross-reference to the appropriate ch. 54 reference and made no additional reference to "ch. 880, 2003, stats." if the statute in ch. 880 is merely renumbered and not also amended, if an initial applicability provision makes clear that a new statute or renumbered statute applies, or if the statute clearly points to future actions.

2. Those that refer to "guardian" or "guardianship" in a way that is now changed under the bill's requirements; see 1. a. and b., above.

3. Those that refer to "incompetent" as a noun, refer to "determined to be incompetent," or refer to "incompetent person." I have amended many of these statutes to refer to "individual adjudicated incompetent;" often I do not also refer to "in this state," because the statute is unclear as to whether the adjudication of incompetency must be in this state or may be foreign; if, in reviewing this material, you feel "in this state" should be added to a particular statute, please let me know. "Incompetence" in the Wisconsin statutes is used in one of three ways: (a) with reference to a court determination and appointment of a guardian; (b) to describe a person's actions that are negligent, careless, etc., and that make him or her unfit to hold a license or to perform certain professional activity; and (c) to characterize persons who lack substantial mental capacity to understand trial proceedings for offenses ("incompetent to proceed"). I have tried to clarify which of the three meanings is apt in amending a statute, if necessary.

INITIAL APPLICABILITY

The introducible bill will contain numerous "Initial Applicability" sections at the back of the bill. The purpose of an "Initial Applicability" provision is to specify the event in a series of events that is the first to which a change in the law applies; upon the occurrence of the event (e.g., the filing of a petition for guardianship), the changes in the law that the act causes begin to apply. There will be several initial applicability provisions because, after I talked with Betsy, it was clear that only some, and not all, of the bill's ch. 880 changes and new provisions should be "pegged" to the filing of a petition. Review of incompetency, under ch. 54, for instance, should not be tied to the filing of an initial petition after passage of the bill, because to do so would mean that adjudications of incompetency that are made before the bill's effective date would never be reviewed under the new standards. I have not included the "Initial Applicability" provisions because, if you significantly change the draft you received in early October, it will be difficult for me to go through and correspondingly change those provisions--it's far easier to work with a completed bill.

TRANSITIONAL PROVISIONS

The purpose of a transitional provision is, among other things, to make clear what happens to persons affected by a law when that law is repealed. (It is the flip side, if you will, of an initial applicability provision--an initial applicability tells one

how a new law begins to apply, whereas a transitional provision tells one how an old law is phased out.) A transitional provision is drafted as a nonstatutory provision. In the draft that you received in early October, there are transitional provisions at the back of the bill concerning individuals who are subject to orders issued under s. 880.33 (4m) and (4r), stats. (court authorizations for guardians to consent to the forcible administration of psychotropic medication to wards), which are repealed under the bill. I have scrutinized the bill and found that there are numerous other instances in which statutes that authorize or require the court to issue certain orders are repealed and have drafted transitional provisions for them--they are at the end of the document that I am sending you today. Please review them and let me know if you spot problems. I am uncertain as to how to address issues concerning limited guardianships (ss. 880.33 (3) and 880.37, stats., are repealed in the bill, but the bill retains some references to "limited guardianship," so I'm not quite sure what is your intent.

REMAINING PROBLEMS

1. Section 54.15 (7) (renumbered from s. 880.35, stats.) formerly referred to DHFS' rules under ch. 55, stats.; the provision now refers to DHFS' rules under ch. 54, which DHFS will have to promulgate. Do you want to give the provison a delayed effective date to provide DHFS time to promulate rules (it usually takes DHFS at least nine months to a year to do so, although these rules would, I presume, be similar to those already promulgated)? We cannot require DHFS to promulgate rules by a specific date, since DHFS has no control over the exact amount of time the process will take, but we can speed up the process by requiring DHFS to submit proposed rules to the Legislative Council rules clearinghouse by a date that is, say, three months after bill passage. Another way to speed up the process is to give DHFS emergency rule-making authority and remove the requirement that DHFS make a finding of emergency; then, usually, DHFS can get the regular rules promulgated while the emergency rules are in effect and the delayed effective date for s. 54.15 (7) could correspond to the bill's effective date (which is six months after passage). What is your pleasure?

2. I have looked at the bill in light of the concerns Betsy indicated had been expressed by Ellen Henningsen concerning spendthrifts; she apparently thinks that spendthrifts are not sufficiently covered by the ch. 54 provisions. I'm not sure that I understand what she feels is a problem. Is it possible that she did not notice that "proposed ward," as defined in the bill, includes spendthrifts? If there is an additional problem, please let me know.

*Debora A. Kennedy*
Managing Attorney
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debora.kennedy@legis.state.wi.us

## Kennedy, Debora

**From:** Theresa L. Roetter [troetter@hill-law-firm.com]
**Sent:** Sunday, December 12, 2004 3:42 PM
**To:** Barbara S. Hughes; BETSY J ABRAMSON; beckerhickey_bjb@sbcglobal.net; jjaeger@mailbag.com; tammi@execpc.com; dsybell@wisbar.org
**Cc:** Kennedy, Debora
**Subject:** RE: Guardianship Reform & child-related issues/questions

Following are my suggestions regarding child-related issues/questions. I've used the page numbers from the draft provided by Atty. Barbara Hughes:

Pg. 21 A question was raised as to whether subsection (4)(c) was necessary now that changes were made to sub (4)(b). The answer is: Yes, sub(c) is still necessary to address the issue of parental preference in the statue. Parents still have preference unless the court finds them either unsuitable or unwilling.

However, you must also read all subsections here concurrently. When read concurrently, a conflict arises between sub(4) and sub(5). Currently, sub(5) suggests that a parent could never be appointed guardian of a minor et al. if a minor objects. That is not appropriate. I suggest that the last 4 lines of sub(5) be worded as follows:

. . . guardian [strike this next phrase: "unless the proposed ward objects or"] unless the court finds that the appointment is not in the minor's best interests. ADD: "The court shall consider a proposed ward's objection to the appointment of his or her parent(s)."

Pg. 41 sub(d)1 In this draft, the terms "care, custody and control" as powers of a guardian have been deleted from the definitions section. I suggest adding that language here, at the end of the paragraph, as: "When a court appoints a guardian for a minor, the guardian shall be granted care, custody and control of the person."

Then, I also suggest adding back into the definitional section something about what "care, custody and control" means.

Pg. 44 sub(p) This is the only section relating to "powers of the guardian" which addresses custody. For a minor more needs to be added. Barb suggested the section might read, "For an adult, the power to have custody. For a minor, the power to have care, custody and control." I suspect there is a better way to word this section.

Pg. 60 sub(4) Presence of Proposed Ward. This section clearly addresses the case law issues for adults. However, there is no provision to excuse the presence of a minor. This needs to be differentiated. Perhaps adding a shortsub(a) "Minors. A minor is not required to attend a guardianship hearing." Then adding "(b) Adults." And putting the rest of the paragraph language in that section.

Pg. 65 sub(6) Question in note - Answer is: Okay.

Pg. 69 sub(2) Question in note - Answer is: No. Your proposal would eliminate stand-by guardianships for most minors. A Ch. 48 guardianship can only be applied to minors who are under court supervision through a CHIPS case which, thank goodness, is a small % of the population. Please reinsert language allowing minors to be the subject of a stand-by guardianship.

Comment: I've recently learned that the Joint Legislative Council will not be tackling a separate juvenile guardianship chapter this session. With your permission, I'd like to run this chapter past a few other

child advocates who are interested in making sure we don't lose protections for children with guardianship reform. Please contact me with any questions or comments.

Thanks!

- Theresa

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troetter@hill-law-firm.com



-----Original Message-----
From: Barbara S. Hughes
Sent: Thursday, December 02, 2004 1:46 PM
To: 'BETSY J ABRAMSON'; beckerhickey_bjb@sbcglobal.net; jjaeger@mailbag.com; tammi@execpc.com; dsybell@wisbar.org
Cc: debora.kennedy@legis.state.wi.us; Theresa L. Roetter
Subject: Guardianship Reform & child-related issues/questions

Just to let all of you know, this afternoon Theresa Roetter and I discussed the minor child-related issues, including a few good suggestions that she now raises after a closer review of the entire draft. Theresa will send an email with her responses and suggestions (the substance of which she and I have discussed--and we are in full agreement). I hope Jim got to someone in RPPT on whatever that/those issues were. I am still buried and can't do that part currently.

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-----Original Message-----
From: BETSY J ABRAMSON [mailto:bjabramson@wisc.edu]
Sent: Sunday, November 21, 2004 3:40 PM
To: beckerhickey_bjb@sbcglobal.net; Barbara S. Hughes; jjaeger@mailbag.com; tammi@execpc.com; dsybell@wisbar.org
Cc: debora.kennedy@legis.state.wi.us
Subject: Guardianship Reform - and again.
Importance: High

Hey friends:
Spent the last couple days reviewing your comments from the 11/05/04 meeting I had to miss and getting the draft ready to go back to Debora. There are a few things (really, just a few) I need to ask you all about, or ask you to ask others:

p. 18 - Question about RPPT. Could any of you answer this? Or could I ask Barb H or Jim J to contact the RPPT folks and ask them?

pps. 21, 65 and 69 - could Barb H or Jim J ask Theresa Roetter to give us respones to those?

pp.96-109 - all about psychotropic meds. I'm going to ask Dianne Greenely to review this carefully.

p. 112 - ALL OF YOU - what's your thoughts on Debora's qu3estions under 814.66(1)(n)?

Finally, Debora sent me a long e-mail on 10/19/04 about possible changes needed in the powers of attorney law (chs. 243 and 155), based on our change to the presumption in poahc (that the poahc remains in effect UNLESS court finds it in best interests to retain it if appoints a guardian) and various issues related to dpoa as well. Could I please have a little chatter on that? In case you lost that e-mail, I'll re-send it.

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Thanks all. Have a great Thanksgiving. Bets

Betsy J. Abramson
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## Kennedy, Debora

**From:** Betsy J. Abramson [bjabramson@wisc.edu]
**Sent:** Thursday, December 16, 2004 2:11 PM
**To:** Kennedy, Debora
**Subject:** Fwd: RE: Guardianship Reform and minors....

yeah! They can't say we didn't ask/offer! BA

>Date: Thu, 16 Dec 2004 14:09:17 -0600
>From: "Theresa L. Roetter" <troetter@hill-law-firm.com>
>Subject: RE: Guardianship Reform and minors....
>To: "Betsy J. Abramson" <bjabramson@wisc.edu>
>Thread-topic: Guardianship Reform and minors....
>Thread-index: AcTiLsDWwNbIVINUSgCumjOqWDjU7gBfDGvg
>X-Spam-Score:
>X-Spam-Report: IsSpam=no, Probability=7%, Hits=__C230066_P5 0, __CT 0,
>__CTE 0,
> __CT_TEXT_PLAIN 0, __HAS_MSGID 0, __IMS_MSGID 0, __MIME_VERSION 0,
> __SANE_MSGID 0
>X-Spam-PmxInfo: Server=avs-4, Version=4.7.0.111621, Antispam-Engine: 2.0.2.0,
> Antispam-Data: 2004.12.16.2, SenderIP=208.171.49.23
>X-MS-Has-Attach:
>X-MS-TNEF-Correlator:
>Original-recipient: rfc822;bjabramson@wisc.edu
>
>Betsy - I think we'll have to go with the latter solution. Drafting a
>definition of "care, custody and control" is a bit out of my league.
>Thanks for asking.
>
>- Theresa
>
>Theresa L. Roetter
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>
>This message is a confidential communication intended only for the
>addressee. Use or disclosure of this confidential communication by
>anyone other than the addressee is prohibited. If you received this
>communication in error, please contact the sender immediately. Thank
>you.
>
>
>-----Original Message-----
>From: Betsy J. Abramson [mailto:bjabramson@wisc.edu]
>Sent: Tuesday, December 14, 2004 4:46 PM
>To: Theresa L. Roetter
>Cc: Barbara S. Hughes; debora.kennedy@legis.state.wi.us
>Subject: Guardianship Reform and minors....
>
>
>Theresa: Thanks for looking at all the guardianship issues related to
>minors. You indicated in an e-mail that it would be nice to define
>"care,
>custody, and control." Do you have any thoughts on how to do
>that? Obviously, it's not our area of expertise! We're really pushing
>to
>get this thing out on schedule, so that it can be introduced in January

>so
>the drafter tells me we'd really need your definition by Monday,
>12/20/04
>(hey, it IS the season of miracles, right?) Otherwise, she suggests
>that
>we might consider as a solution working "care, custody, and control"
>into
>the substantive powers and duties for the guardian of a minor and just
>leave it at that. Would you like to try to draft something or do you
>like
>the latter solution? Thanks. Betsy

CROSS REFS + TRANSITION 05-0027 X refs

1. p. 1 – changes ok?

Ignore 2. p. 3 – See NOTE
see also 32.15. does it make sense for a person who has been adjudicated incomp. to not have a guardian? Amend?

3. p. 6 – ok? BA: Yes

ok 4. p. 7 – BA will check

ok 5. p. 13 – ok?

ok 6. p. 14 – ok?

7. p. 15 – ok

8. p. 19 – yes

9. p. 20 – ok

p. 20 – ok

10. p. 21 – ok

* 11. p. 23 – change 51.45 (13)(c) + (e) – delete spouse

12. p. 29 – no

13. p. 31 – yes

14. p. 42 – BA will answer – see e-mails

15. p. 44 – yes

* 16. p. 47 – DAK to call } delete
17. p. 48 – DAK to call }

18. p. 49 – ok

19. p. 50 – ok

20 p. 61 – yes
– repeal as to w/dis adjud-cr/comp

21. p. 63 – ok

21. p. 70 – no; see change

22. p. 71 – ok BA will figure aggreg. X ref. – AM; 808.075(4)(f) 7. 54.19(4) to refer to

23. p. 72 – change figure to amt specified in s. 867.03

24. p. 73 – no

NO 25. p. 83 – BA will answer

* 26. p. 87 – BA will answer pending actions are terminated

## Kennedy, Debora

**From:** Betsy J. Abramson [bjabramson@wisc.edu]
**Sent:** Friday, December 24, 2004 12:31 PM
**To:** Kennedy, Debora
**Cc:** bhughes@hill-law-firm.com; beckerhickey_bjb@sbcglobal.net; jjaeger@mailbag.com; tammi@execpc.com
**Subject:** G Reform - other remaining questions (except venue)

12/24/04
TO: Debora Kennedy
CC: Barbara Hughes, Barbara Becker, Jim Jaeger, Bruce Tammi - please look at least at #6. THANKS.

1. Definition of court on page 6, 54.01(4), compared to 40.08(9m) in the insert and 851.73(1)(g). Well, for starters, I could not find any 851.73(1)(g). There isn't one in current law and I could not find it in either the insert or the fake bill. Am sure it's there, I'm just coming up empty. Anyway, as to the 40.08(9m) (Employee Trust Funds - who can make designations, etc.) compared to 54.01(4)'s definition of court, I think there is no conflict and they are fine as in. As to 851.73(1)(g), sorry, since I can't find it, can't comment. (I looked around page 73 of the insert, where I thought it'd be - as well as paging through lots of other parts of both....)

yes, there is — power of register in probate to act as cir ct. commissioner

Issue: Def. says "ct." means cir. ct. or judge assigned to exercise probate juris.; is that the same as a cir. ct. commissioner? (See 851.73(1)(g) + 40.08 (9m)

2. reference to "the spouse" in 51.45(3)(c) and (e). INSERT page 21 - end of about 9th line, and page 22 last line) As you'll see by the cc: in another e-mail, I've asked Dianne Greenley about it. Perhaps there is a reason? In guardianships, of course, notice of the hearing is required to be given to all "interested persons," which certainly includes a spouse - but is much broader than that. I have no reason why the spouse is listed like this separately (although arguably the spouse has "interest" than, say, Great Aunt Tillie. Anyway, while awaiting Dianne's comments, I'd say just leave it as is? Perhaps there really is a good reason to let a spouse know that the other spouse is about to have a probable cause hearing and be carted away? (Seems like a good family value.)

See my changes

3. p. 42 of the insert re: powers of attorney for health care. I believe I addressed that in an e-mail forwarded to you on 12/23/04, with responses provided by Milwaukee Attorney Barbara Becker, in an e-mail to me on 11/23/04.

See my changes

4. p. 61, section 154, sec. 786.20 - I believe that we agreed on 12/20/04 that this should, indeed, be repealed as you posited in your question there.

← Yes, but changed b/c of Theresa R.

5. p.71 - I agreed that rather than repeal 808.075(4)(f)7., it should remain, but be "re-routed" as is most of the rest of 808.075(4)(f). For 80.075.(4)(f)7, it would seem that it should be re-routed simply to 54.19 and 54.20 (the "duties" and "powers" of guardians of the estate, respectively. Alternatively, and more specifically, the sense of 880.21 (to which (4)(f)7 refers) is about using the estate for the benefit of the ward and those dependent on him or her, it would seem that the 808.075(4)(f) language could be changed to a singular "ward" instead of "wards" and that, the place it is re-routed to is in the main "fake" bill, page 26, to 54.19(4).

6. p.82 - 879.57 - Special administrator; personal representative; guardian. Your question was whether there should be a cross-reference to this section in ch. 54. I note that there is no cross-reference to ch. 880 in it now, so my answer would be NO. Best I can tell, this section, 879.57, which is in PROBATE chapter, appears to be referring to a situation where there is at time of a death, no personal rep., or no guardian for a minor or adjudicated incompetent, probably as regards where the latter two (minor or incompetent) stands to inherit money. Looks like this section says that the court can go ahead an appoint someone special administrator

No ref. to ch. 54

in either of these situations until the court appoints a "real" guardian. I don't know how or where a reference to ch. 54 would be made - (or vice-versa, whether 880 should reference this). Best I know (and this doesn't say much since I don't do private practice in this or any other area), there has been no need for the cross-reference to the guardianship chapter. But let me ask my friends: BARB, BARB, JIM, BRUCE: Do we need a reference?

7. I have on my notes "p. 87" but I have no question noted there as to what your question was there. In fact, the page has no "NOTE" or question, etc. If your notes indicate that you need a response to something, please advise.

? Limited guardianship

So, I believe that "just" leaves venue. Will work on that this weekend and hopefully have something for you early next week. As always, I am sorry about the delay.

See 6.03(1)(a)
880.215 → 54.47
880.331(4)(a) → 54.40(4)(a)
54.25(2)(d)

Note: This material is duplicative — read Barb. Hughes comments only

## Kennedy, Debora

**From:** Barbara S. Hughes [bhughes@hill-law-firm.com]
**Sent:** Tuesday, December 28, 2004 9:21 PM
**To:** Betsy J. Abramson; Kennedy, Debora
**Cc:** beckerhickey_bjb@sbcglobal.net; jjaeger@mailbag.com; tammi@execpc.com; Barbara S. Hughes
**Subject:** RE: G Reform - other remaining questions (except venue)

Comments on two of Betsy's responses appear below hers, within her message. I can't look further right now on the rest.

NOTE: These are answers to questions in the Cross-Ref. Section (LRB-0027/ Xrefs)

Barbara S. Hughes
Hill, Glowacki, Jaeger & Hughes, LLP
2010 Eastwood Dr., Suite 301
P.O. Box 3006
Madison, WI 53704
phone 608-244-1354
fax 608-244-4018
bhughes@hill-law-firm.com

-----Original Message-----
From: Betsy J. Abramson [mailto:bjabramson@wisc.edu]
Sent: Friday, December 24, 2004 12:31 PM
To: debora.kennedy@legis.state.wi.us
Cc: Barbara S. Hughes; beckerhickey_bjb@sbcglobal.net; jjaeger@mailbag.com; tammi@execpc.com
Subject: G Reform - other remaining questions (except venue)

12/24/04
TO: Debora Kennedy
CC: Barbara Hughes, Barbara Becker, Jim Jaeger, Bruce Tammi - please look
at least at #6. THANKS.

1. Definition of court on page 6, 54.01(4), compared to 40.08(9m) in the insert and 851.73(1)(g). Well, for starters, I could not find any 851.73(1)(g). There isn't one in current law and I could not find it in either the insert or the fake bill. Am sure it's there, I'm just coming up empty. Anyway, as to the 40.08(9m) (Employee Trust Funds - who can make designations, etc.) compared to 54.01(4)'s definition of court, I think there is no conflict and they are fine as in. As to 851.73(1)(g), sorry, since I can't find it, can't comment. (I looked around page 73 of the insert, where I thought it'd be - as well as paging through lots of other parts of both....)

Issue: Def. says "ct" means cir. ct. or judge assigned to exercise probate juris.; is that the same as a cir ct. commissioner? (See 851.73(1)(g) + 40.08(9m)

BARB HUGHES: 851.73(1)(g) does exist in current law. I found it in my recently received Wisconsin Probate and Estate Planning Statutes 2005 volume.

2. reference to "the spouse" in 51.45(13)(c) and (e). INSERT page 21 - end of about 9th line, and page 22 last line) As you'll see by the cc: in another e-mail, I've asked Dianne Greenley about it. Perhaps there is a reason? In guardianships, of course, notice of the hearing is required to

See my changes

be given to all "interested persons," which certainly includes a spouse - but is much broader than that. I have no reason why the spouse is listed like this separately (although arguably the spouse has "interest" than, say, Great Aunt Tillie. Anyway, while awaiting Dianne's comments, I'd say just leave it as is? Perhaps there really is a good reason to let a spouse know that the other spouse is about to have a probable cause hearing and be carted away? (Seems like a good family value.)

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reference?

BARB HUGHES: I've never had an 879.57 situation arise, though I did once (long ago) end up drafting a minor's trust to receive the life insurance, retirement benefits or IRA of a decedent's minor children. (I can't recall which.) I represented the mother (and ex-spouse) in that case. The court ordered the a trust created as the receptacle for what was coming, but not actually from the probate estate. This must have been filed in a civil action to create the trust, probably consolidated with the probate matter. The court may have appointed the mother as the children's guardian using the 879.57 authority. So: getting to the question--is an X-ref. needed in ch. 54--I am inclined to say no, since it's not there in the existing .57 and also because this is a temporary situation where it would be unfortunate to have to bring all of the ch. 54 procedure to bear.

7. I have on my notes "p. 87" but I have no question noted there as to what your question was there. In fact, the page has no "NOTE" or question,
etc. If your notes indicate that you need a response to something, please
advise.

So, I believe that "just" leaves venue. Will work on that this weekend and
hopefully have something for you early next week. As always, I am sorry

about the delay.

(FAKE BILL) -0027/P1

DAK to do - talk also w/ B. Abramson

✓1. p. 6 + p. 95 Def of "degen brain disorder" - fluid language alt. handling financial matters - See if my change is ok ok

✓2. p. 14 - 54.10 (2) - see if standards for spendthrift are clear elsewhere. See 54.44 (2) I but I suppose we'd add to both 54.10 (1) and (2)

✓3. p. 18 54.12 (2) Betsy: ignore

✓3m. p. 21 - 54.15 (4)(c) (880.09 (3) - repeal

✓4. p. 31 54.21 (1)(a) ok

Venue question 5. p. 43 54.25 (2)(d) 2. g. restore [See 55.075 (5) + D-N for 0026/P1]

6. p. 43 venue (54.30)

Venue question 7. p. 45 Venue - what is def. of residence? Is it physical presence? If so, the proposed addition is incorrect. Bec. the 2d sentence is dealing with nonresidents 54.30 (2)

✓8. p 46 54.30 (3)(b) 1. - Don't need "any".

9. p. 47 Venue

9m. p. 48 - Is new provision in conflict w/ LegCo. ch. 55? [See 55.075 (5) + D-N for 0026/P1]

✓10. p. 54 · 880.33 (1) proposed lang. and "ok" are in conflict No - could be reviewing scope of guardianship

✓11. p. 63 - make identical under what model? ok as is

✓12. p. 65 - 54.46 (6) : Theresa Rattan ok

✓13. p. 69 54.52 : " " Restore

✓14. p. 78 - 54.625 leave as is

✓15. p. 96 - 55.06 (6) - what shd. I do? Strike

✓16. p. 104, 105 - 55.19 (1) (c) 3. BA to check w/ D. Greenley

✓17. p. 106 55.19 (2) (b) 3. + (e) " "

✓18. p. 108 55.19 (3) (e) 1. " "

✓19. p. 109 55.19 (3) (e) 2. " "

OK as is — ? 20 p. 112 814.66 (1) (n) no answer as yet

✓21. p. 128 SEC. 52 (2) ok for now

✓22 p. 90 — 54.76(3) income + assets are

## Kennedy, Debora

**From:** Betsy J. Abramson [bjabramson@wisc.edu]
**Sent:** Thursday, December 23, 2004 4:56 PM
**To:** Kennedy, Debora; Dianneg@w-c-a.org
**Subject:** Psych meds in Guard Reform draft

Well, I promised to call Dianne and jiggle her about this, but of course I waited too long and now she's gone. So, I had promised to stick my neck out and give you my reaction to your questions on the draft about this, so, reluctantly and with caution, I offer the following:

p. ~~100~~ 96 - 55.06(6) in current law is fine, although of course it needs a new reference (not to 880.33(3) but the new ch. 54 reference) and we might as well delete the reference to 55.06(9)(e), as that was found unconstitutional by Watts (a few decades ago....)

p.105 I think YES, that we want the annual review of the psych meds protective services order to review, and establish, annually, that all the original standards (i.e., those required to be alleged in the original petition and proven) still exist.

p.106 - under (b)(3) and (e) - YES, I thnk this IS a right - to a new evaluation every year. ? But this is referring to the independent eval

p. 108 - under (3)(e)1, I would add on third line after "shall include" the words "IN THE ORDER" before the words "the information relied upon as a basis for the order...."

p. 109 under (3)(e)2., I would similarly add the words "IN THE ORDER" at the end of the 5th line, after "The court shall include...."

I believe that covers all of your questions about psych meds. Dianne: Please speak up if you disagree with any of this. Bets

Note: Superceded by 1/10/05 e-mail from B.A.

## Kennedy, Debora

**From:** Betsy J. Abramson [bjabramson@wisc.edu]
**Sent:** Thursday, December 23, 2004 3:38 PM
**To:** Kennedy, Debora
**Subject:** Fwd: Re: Health care powers of attorney and durable powers of attorney; chapter 880 revisions

DAK: Here are the answers re: health care powers of attorney/durable powers of attorney and ch. 880/54. You are absolutely right (as always!) that there is a conflict between existing law and what we have proposed re: the precedence of poa vs. guardianship, and that changing this presumption will require changes in related laws. Thanks (as always again!) for finding them. Our goal is to change from existing law, which assumes that a poahc should be revoked when a guardianship is filed, and that the guardianship takes over. We want to honor people's previously-made preferences, by presuming that the poahc should remain in effect, and only when in the ward's best interests (e.g., the agent is being abusive, neglectful, etc.) would we want to un-do the poahc. Existing law does NOT, as you rightly point out, have a presumption when a guardian of the estate is sought for a person who has a previously completed durable power of attorney for finances. In both situations (personal and health care) we want to try to honor the previously made choices, again, unless in their best interests to un-do. Hope this paragraph, and the comments below from Barbara Becker and Barbara Hughes (the latter is the "BSH") will address those questions. Have fun with your boys and wives! Bets

>Date: Tue, 23 Nov 2004 17:32:14 -0600
>From: beckerhickey_bjb <beckerhickey_bjb@sbcglobal.net>
>Subject: Re: Health care powers of attorney and durable powers of attorney;
> chapter 880 revisions
>To: "Betsy J. Abramson" <bjabramson@wisc.edu>
>Cc: "Jim A. Jaeger" <jjaeger@hill-law-firm.com>,
> "Barbara S. Hughes" <bhughes@hill-law-firm.com>, Bruce Tammi
> <tammi@execpc.com>
>X-Mailer: Microsoft Outlook Express 6.00.2800.1437
>X-Spam-Score:
>X-Spam-Report: IsSpam=no, Probability=7%, Hits=__C230066_P5 0, __CT 0,
>__CTE 0,
> __CT_TEXT_PLAIN 0, __HAS_MSGID 0, __HAS_MSMAIL_PRI 0, __HAS_X_MAILER 0,
> __HAS_X_PRIORITY 0, __LINES_OF_YELLING 0, __MIME_VERSION 0, __SANE_MSGID 0
>X-Spam-PmxInfo: Server=avs-8, Version=4.7.0.111621, Antispam-Engine: 2.0.2.0,
> Antispam-Data: 2004.11.23.27, SenderIP=66.163.168.184
>Original-recipient: rfc822;bjabramson@wisc.edu
>
>Betsy,
>I'll put my responses after the questions.
>Barbara B.
>----- Original Message -----
>From: "Kennedy, Debora" <Debora.Kennedy@legis.state.wi.us>
>To: <bjabramson@wisc.edu>
>Sent: Tuesday, October 19, 2004 1:31 PM
>Subject: Health care powers of attorney and durable powers of attorney;
>chapter 880 revisions
>
>
> >
> > In the bill, under s. 54.46 (2) (b) and (c), I left ****Notes that
>indicated that it might be necessary to amend provisions in chs. 155 and 243
>to conform to the bill's requirements. When I compared the provisions in
>current law and those proposed in the bill, several issues came up, which I
>think will need review and decisions by the committee. Here are the
>problems:
> >

> > HEALTH CARE POWER OF ATTORNEY
> >
> > In the bill, s. 54.46 (2) (b) (s. 880.33 (8) (b), stats., as renumbered
>and amended) requires a health care power of attorney executed by a ward to
>remain in effect unless a court for good cause revokes or limits the health
>care power of attorney.
> >
> > Under current law:
> >
> > (a) Section 155.60 (2), stats., REVOKES a health care power of attorney
>for an individual who is determined to be incompetent UNLESS the court finds
>that it must remain in effect.
> >
> > (b) This provision also states that, if the court finds that the health
>care power of attorney should remain in effect, the guardian, if not the
>health care agent, may NOT make health care decisions for the ward.
> >
> > (c) Section 155.05 (1), stats., states that an individual for whom an
>adjudication of incompetence and appointment of a guardian of the person is
>in effect under ch. 880 is presumed not to be of sound mind for purposes of
>executing a power of attorney for health care.
> >
> > QUESTIONS:
> >
> > 1. With respect to (a), which version do you want, that in the bill or
>that in current law? [We want the version in the bill; we intend to
>reverse the current law presumption.]
> >
> > 2. Do you want to keep or repeal (b)? If the former, it will be
>necessary to qualify both the duties and powers of a guardian of the person
>under s. 54.25 (1) and (2) in the bill. [I don't understand the question
>and do not know what (b) refers to. We want to fix sec. 155.60 to conform
>to the new chap. 54 provisions we're proposing.]
> >
> > 3. With respect to (c), I think it would be best to clarify in s. 54.46
>(2) (b) that the execution by the ward of a health care power of attorney
>occurred before a determination of incompetency was made. Okay? [Seems
>okay.]
> >
> >
> >
> > DURABLE POWER OF ATTORNEY
> >
> > In the bill, s. 54.46 (2) (c), as created, requires any durable power of
>attorney executed by a proposed ward to remain in effect unless a court, for
>good cause shown, revokes or limits the power of an agent under the terms of
>the durable power of attonrey.
> >
> > Also in the bill, s. 54.15 (2), as created, requires that the principal's
>agent be appointed as guardian unless the court finds that the appointment
>is not in the proposed ward's best interests.
> >
> > Under current law:
> >
> > (a) Section 243.07 (3) (a), stats., grants to the GUARDIAN OR CONSERVATOR
>the power to revoke or amend the durable power of attorney UNLESS a court
>finds that the durable power of attorney should remain in effect.
> >
> > (b) This provision also states that the agent under a durable power of
>attorney is accountable to both the guardian and to the principal.
> >
> > (c) Section 243.07 (3) (b), stats., REQUIRES a court to appoint any
>guardian nominated by a principal in his or her durable power of attorney,
>except for good cause or disqualification. (The nominated guardian may, of
>course, be different from the agent.)
> >
> > QUESTIONS

> >
> > 1. With respect to (a), which version do you want, that in the bill or
>that in current law? [The bill.]
> >
> > 2. Do you want to keep or repeal (b)? [If the guardian is not the HC
>agent, then account to both gdn and principal]
> >
> > 3. Do you want to keep or repeal (c)? If the former, it will be
>necessary to qualify s. 54.15 (2) accordingly. [Currently serving agent
>should be first choice for guardian but if power is invalidated by court per
>standards of chap. 54, then the nominated agent should be appointed-- 2
>sequential presumptions, I think.]
> >
> >
> > Any changes to either the health care power of attorney statutes or the
>durable power of attorney statutes will have to be accompanied by an initial
>applicability provision in the nonstatutory provisions that clarifies that
>these changes first apply to a health care power of attorney or a durable
>power of attorney that is executed on a particular date (usually, the
>effective date of the bill). [As long as it's coordinated with effective
>date of chap. 54 bill.]
> >
> >
> >
> > Debora A. Kennedy
> > Managing Attorney
> > Legislative Reference Bureau
> > (608) 266-0137
> > debora.kennedy@legis.state.wi.us
> >
> >

## Kennedy, Debora

**From:** Betsy J. Abramson [bjabramson@wisc.edu]
**Sent:** Friday, December 24, 2004 11:54 AM
**To:** Dianneg@w-c-a.org
**Cc:** Kennedy, Debora
**Subject:** 51.45(3)(c) and (e) notice to spouse?

Dianne: Looking at current law (and possible changes resulting to it from guardianship reform), Debora Kennedy noticed that in 51.45(3)(c) and (e), among people provided notice of the probable cause hearing and the hearing, is "the spouse" (if any) as well as any legal guardian, superintendent of any facility and legal counsel. Under guardianship law, of course, notice of the guardianship hearing is given to "interested persons" and certainly the spouse is one of those assumed interested, but do you have any idea why in ch. 51 the spouse is listed separately like this? Why not other interested persons? As long as changes are occurring, what do you think - keep the spouse listed in both of these sections or delete the reference? Thanks. Bets

## Kennedy, Debora

**From:** Betsy J. Abramson [bjabramson@wisc.edu]
**Sent:** Thursday, December 23, 2004 4:59 PM
**To:** Rose, Laura
**Cc:** Kennedy, Debora
**Subject:** Venue (my least favorite subject) under Guardianship Reform

Laura: Debora Kennedy told me on 12/20/04 that she sent you a memo on 12/6/04 - titled LRB-0026/P1dn about the venue jazz. It continues to be pretty greek-ish to me. Have you and/or Mary M. reviewed it? Any thoughts? Would it be ok for Debora to release it to me electronically so I could forward it on to the venue gods over at DHFS to see what they think of it? Thanks. Hope you're warm somewhere. Betsy

## Kennedy, Debora

**From:** beckerhickey_bjb [beckerhickey_bjb@sbcglobal.net]
**Sent:** Thursday, December 23, 2004 7:54 PM
**To:** jjaeger@mailbag.com; bhughes@hill-law-firm; tammi@execpc.com; Betsy J. Abramson
**Cc:** Kennedy, Debora
**Subject:** Re: p.112 of Guard Reform

Betsy,
What is "a fee of 410"? I can't get my mind around when this stat. is used. Why would we be in favor of small trust accounts paying anything to the clerk of court? In a serious vein/vain, this stat. would apply when the estate of the proposed ward is too small to warrant a gdn of est. How exactly does it fit into the gdnshp reform? Why would it change from what it is now? That's the kind of answer you get in the holiday season-- I'm gone until 12/28-- hope this is resolved before then-- p.s., great progress Bets, way to go!!
Barbara B.
----- Original Message -----
From: "Betsy J. Abramson" <bjabramson@wisc.edu>
To: <jjaeger@mailbag.com>; <beckerhickey_bjb@sbcglobal.net>; <bhughes@hill-law-firm>; <tammi@execpc.com>
Cc: <debora.kennedy@legis.state.wi.us>
Sent: Thursday, December 23, 2004 4:17 PM
Subject: p.112 of Guard Reform

> Hey guys - I know, I know, it's Christmas Eve Eve. You know you could
> count on that blue state non-Christmas celebrating separation of church and
> state crank to send out a question on Guardianship Reform
> now. Alas..... I met with Debora all afternoon on Monday. We're
> heading toward the finish line.
>
> One more.....
> On p. 112 of the draft, deal with Costs and Fees, Debora has asked whether
> "this language meets our intent" Does it?
>
> 814.61 Civil Actions - Fees of the Clerk of Court
> (12)(a)1. For receiving a trust fund, or handling or depositing money
> under s. 757.25 or 807.10(3), at the time the money is deposited with the
> clerk, a fee of $10 or 0.5% of the amount deposited, whichever is
> greater. In addition, a fee of $10 shall be charged upon each withdrawal
> of any or all of the money deposited with the clerk.
>
> 814.66 - Fees of Register in Probate
> (1)(n) - For depositing or disbursing money under 54.12(1)(a) [p.17 -
> Exceptions to appointment of guardian - small estates] - a fee of $10 or
> 0.5 percent of the amount deposited, whichever is greater at the time the
> money is deposited with the register in probate, and a fee of 410 whenever
> any withdrawal is made of the money deposited with the register in probate.
> Debora's question, apparently directed only at 814.66, is: "This language
> is adapted from 814.61(12)(a)1; does it meet your intent?"
> (I'm so attentive that I did notice that one uses the % sign and one uses
> the word "percent" but that's my entire contribution to this one.)
> Answer please..... Thank you. Bets
>

## Kennedy, Debora

**From:** Betsy J. Abramson [bjabramson@wisc.edu]
**Sent:** Thursday, December 23, 2004 4:48 PM
**To:** Kennedy, Debora
**Subject:** Fwd: RE: p.112 of Guard Reform

Sure - p. 112 question - meets at least Jim's intent.
BA

>Date: Thu, 23 Dec 2004 16:26:37 -0600
>From: Jim Jaeger <jjaeger@mailbag.com>
>Subject: RE: p.112 of Guard Reform
>To: "'Betsy J. Abramson'" <bjabramson@wisc.edu>,
> beckerhickey_bjb@sbcglobal.net, bhughes@hill-law-firm.wiscmail.wisc.edu,
> tammi@execpc.com
>Cc: debora.kennedy@legis.state.wi.us
>X-Mailer: Microsoft Outlook, Build 10.0.3416
>Importance: Normal
>X-Spam-Score:
>X-Spam-Report: IsSpam=no, Probability=7%, Hits=__CHILD_PORN_NOT_1 0, __CT 0,
> __CTE 0, __CT_TEXT_PLAIN 0, __HAS_MSGID 0, __HAS_MSMAIL_PRI 0,
> __HAS_X_MAILER 0, __HAS_X_PRIORITY 0, __IMS_MSGID 0, __MIME_VERSION 0,
> __SANE_MSGID 0
>X-Spam-PmxInfo: Server=avs-4, Version=4.7.0.111621, Antispam-Engine: 2.0.2.0,
> Antispam-Data: 2004.12.23.27, SenderIP=205.173.176.20
>X-Spam-Flag: Unchecked-POP3
>X-Scanned-By: MIMEDefang 2.40
>Original-recipient: rfc822;bjabramson@wisc.edu
>
>Sure, I guess so--assuming I had any "intent."
>
>James A. Jaeger, CELA*
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>
>Assisting Elderly and Disabled Individuals and their Families
>
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>
>-----Original Message-----
>From: Betsy J. Abramson [mailto:bjabramson@wisc.edu]
>Sent: Thursday, December 23, 2004 4:17 PM
>To: jjaeger@mailbag.com; beckerhickey_bjb@sbcglobal.net;
>bhughes@hill-law-firm; tammi@execpc.com
>Cc: debora.kennedy@legis.state.wi.us
>Subject: p.112 of Guard Reform
>
>Hey guys - I know, I know, it's Christmas Eve Eve. You know you could
>count on that blue state non-Christmas celebrating separation of church
>and
>state crank to send out a question on Guardianship Reform
>now. Alas..... I met with Debora all afternoon on Monday. We're
>heading toward the finish line.
>
>One more.....
>On p. 112 of the draft, deal with Costs and Fees, Debora has asked
>whether
>"this language meets our intent" Does it?
>
>814.61 Civil Actions - Fees of the Clerk of Court
>(12)(a)1. For receiving a trust fund, or handling or depositing money
>under s. 757.25 or 807.10(3), at the time the money is deposited with

>the
>clerk, a fee of $10 or 0.5% of the amount deposited, whichever is
>greater.  In addition, a fee of $10 shall be charged upon each
>withdrawal
>of any or all of the money deposited with the clerk.
>
>814.66 - Fees of Register in Probate
>(1)(n) - For depositing or disbursing money under 54.12(1)(a) [p.17 -
>Exceptions to appointment of guardian - small estates] - a fee of $10 or
>
>0.5 percent of the amount deposited, whichever is greater at the time
>the
>money is deposited with the register in probate, and a fee of 410
>whenever
>any withdrawal is made of the money deposited with the register in
>probate.
>Debora's question, apparently directed only at 814.66, is: "This
>language
>is adapted  from 814.61(12)(a)1; does it meet your intent?"
>(I'm so attentive that I did notice that one uses the % sign and one
>uses
>the word "percent" but that's my entire contribution to this one.)
>Answer please.....  Thank you.  Bets

## Kennedy, Debora

**From:** Bruce A. Tammi [tammi@execpc.com]
**Sent:** Monday, December 27, 2004 11:27 AM
**To:** 'Betsy J. Abramson'; Kennedy, Debora
**Cc:** bhughes@hill-law-firm.com; beckerhickey_bjb@sbcglobal.net; jjaeger@mailbag.com
**Subject:** RE: G Reform - other remaining questions (except venue)

BETSY:

I reviewed all your comments and agree with them. I briefly saw but do not remember the details of an email at home last weekend about the BOG meeting. Where is it and what date and over period of time would I be needed to be present if I represented the section?

Bruce

## Kennedy, Debora

**From:** Betsy J. Abramson [bjabramson@wisc.edu]
**Sent:** Monday, December 27, 2004 11:32 AM
**To:** Bruce A. Tammi; Kennedy, Debora
**Cc:** bhughes@hill-law-firm.com; beckerhickey_bjb@sbcglobal.net; jjaeger@mailbag.com; dsybell@wisbar.org
**Subject:** RE: G Reform - other remaining questions (except venue)

Bruce: Thanks for reviewing this. The BOG meeting is Friday, 1/14/05. As it gets closer, Deb Sybell will tell you when you'd need to be "standing by." The hope, of course, is that this will just slide on in under the "consent agenda" (i.e., non-controversial items....), but we need to have somebody there just in case someone decided to make some noise. Sigh. By cc: of this memo I'm asking Deb Sybell to give us more info - like any idea the time Deb? Could he be available by speaker phone from Milwaukee in his office? Thanks. Betsy

At 11:26 AM 12/27/2004 -0600, Bruce A. Tammi wrote:
>BETSY:
>
>I reviewed all your comments and agree with them. I briefly saw but do
>not remember the details of an email at home last weekend about the BOG
>meeting. Where is it and what date and over period of time would I be
>needed to be present if I represented the section?
>
>Bruce

## Kennedy, Debora

**From:** Betsy J. Abramson [bjabramson@wisc.edu]
**Sent:** Thursday, December 30, 2004 12:02 PM
**To:** Kennedy, Debora
**Subject:** 851.73(1)(g)

xref

p. 6 of draft. No, I don't think any changes needed to 851.73(1)(g). Next stop: Venue! Bets

## Kennedy, Debora

**From:** Betsy J. Abramson [bjabramson@wisc.edu]
**Sent:** Monday, January 03, 2005 4:11 PM
**To:** Dianne Greenley
**Cc:** Kennedy, Debora
**Subject:** RE: 51.45(3)(c) and (e) notice to spouse?

So..... do you want the notice to "spouse" retained there? Betsy

At 03:55 PM 1/3/2005 -0600, Dianne Greenley wrote:
>This is the alcoholism commitment statute - thus, I have no idea why
>spouses are notified (also cite is 51.45(13)). In the regular commitment
>statute - 51.20 (2) and (10) it looks like the person, legal counsel,
>parents of minors, and other persons designated by the court get notices.
>
>-----Original Message-----
>From: Betsy J. Abramson [mailto:bjabramson@wisc.edu]
>Sent: Friday, December 24, 2004 11:54 AM
>To: Dianne Greenley
>Cc: debora.kennedy@legis.state.wi.us
>Subject: 51.45(3)(c) and (e) notice to spouse?
>
>
>Dianne: Looking at current law (and possible changes resulting to it from
>guardianship reform), Debora Kennedy noticed that in 51.45(3)(c) and (e),
>among people provided notice of the probable cause hearing and the hearing,
>is "the spouse" (if any) as well as any legal guardian, superintendent of
>any facility and legal counsel. Under guardianship law, of course, notice
>of the guardianship hearing is given to "interested persons" and certainly
>the spouse is one of those assumed interested, but do you have any idea why
>in ch. 51 the spouse is listed separately like this? Why not other
>interested persons? As long as changes are occurring, what do you think -
>keep the spouse listed in both of these sections or delete the
>reference? Thanks. Bets
>

## Kennedy, Debora

**From:** Dianne Greenley [dianneg@w-c-a.org]
**Sent:** Monday, January 03, 2005 3:56 PM
**To:** Betsy J. Abramson
**Cc:** Kennedy, Debora
**Subject:** RE: 51.45(3)(c) and (e) notice to spouse?

This is the alcoholism commitment statute - thus, I have no idea why spouses are notified (also cite is 51.45(13)). In the regular commitment statute - 51.20 (2) and (10) it looks like the person, legal counsel, parents of minors, and other persons designated by the court get notices.

-----Original Message-----
From: Betsy J. Abramson [mailto:bjabramson@wisc.edu]
Sent: Friday, December 24, 2004 11:54 AM
To: Dianne Greenley
Cc: debora.kennedy@legis.state.wi.us
Subject: 51.45(3)(c) and (e) notice to spouse?

Dianne: Looking at current law (and possible changes resulting to it from guardianship reform), Debora Kennedy noticed that in 51.45(3)(c) and (e), among people provided notice of the probable cause hearing and the hearing, is "the spouse" (if any) as well as any legal guardian, superintendent of any facility and legal counsel. Under guardianship law, of course, notice of the guardianship hearing is given to "interested persons" and certainly the spouse is one of those assumed interested, but do you have any idea why in ch. 51 the spouse is listed separately like this? Why not other interested persons? As long as changes are occurring, what do you think - keep the spouse listed in both of these sections or delete the reference? Thanks. Bets

## Kennedy, Debora

**From:** BETSY J ABRAMSON [bjabramson@wisc.edu]
**Sent:** Monday, January 10, 2005 7:56 PM
**To:** Kennedy, Debora
**Cc:** dianneg@w-c-a.org
**Subject:** Psych meds

Debora: I left a probably indecipherable message about this, so, am writing this from California (it has been raining 10 days straight!) after talking to Dianne the afternoon we left. Here goes:

Draft p. 101 - on page 101, end of 10th line, insert the words "protective services including" betwen "that" and "psychotropic."

p.103 - note - Dianne agreees - fine.

p. 105 - note that ends on top. Yes, Dianne agrees. fine.

p.106 - all notes - ok, yes.

p. 108 - top, in (br) - change "shall" to "may"

p. 108 - under (e)1., third line, after "shall include" insert "in the decision" before "the info relied upon.... then insert after "as a basis for the" the words "continuation of the" before "order and shall make....

p. 109 - same thing. in (e)2 - end of 5th line, include at end after "include" - "in its decision", then on next line after "as a basis for" insert the words "the continuation of" before "its order and shall....."

ok? Hope that's it (this round....) Thanks thanks thanks for your amazing work on this gigantic project. Bets

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bjabramson@wisc.edu

# DRAFTER'S NOTE
## FROM THE
## LEGISLATIVE REFERENCE BUREAU

LRB–2438/?dn
DAK:...:...

2/14/2005

This bill is drafted for the Legislative Reference Bureau, for internal circulation, and not for a legislator. It contains all the provisions that will be incorporated into LRB–0027/1, the guardianship bill. I have drafted it separately because doing so makes the issues somewhat easier to see than in the big bill. I am unsure whether I have sufficiently captured the intent, so careful review is crucial. If the intent is not satisfied, changes may be made to LRB–0027/2, or by amendment.

This bill follows much of WLC: 0254/1 (the bill on residence, venue, and county of responsibility of the Legislative Council's Special Committee on Recodification of Ch. 55, Placement and Services for Persons with Disabilities), which differs significantly from material I had worked out with Gerard Gierl of DHFS before I was aware of the existence of WLC: 0254/1. This bill differs from the Legislative Council bill in at least these respects:

1. Sections 51.40 (2) (a) 1., 55.06 (3) (d), stats., and 54.30 (3) (a) (renumbered from s. 880.06 (1), stats.) permit, rather than require, suspension of a ruling on a motion for change of venue while DHFS makes a determination. I didn't know what to do here; Betsy Abramson's answer differed from Barbara Becker's.

2. Under s. 51.40 (2) (b), the criteria refer to circumstances effective on the bill's effective date, rather than on August 1, 1987; they should not affect previous determinations, however, because of s. 51.40 (2) (b) 2. eg.

3. In s. 55.06 (3) (c), stats., I have amended in Gerard Gierl's criteria for individuals without previous services or with a changed residence.

Debora A. Kennedy
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Phone: (608) 266–0137
E–mail: debora.kennedy@legis.state.wi.us

# State of Wisconsin
**2005 – 2006 LEGISLATURE**

LRB–2438/?
DAK:...:...

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** venue, county of residence, and county of responsibility.

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***Analysis by the Legislative Reference Bureau***

***Jurisdiction and venue; county of responsibility***

Currently, the circuit courts have jurisdiction over all petitions for guardianship; petitions must be directed to the circuit court of the county of residence of the proposed ward or of the county in which the proposed ward is physically present. For nonresidents, the petition may be directed to the circuit court of a county in which the nonresident or his or her property may be found. The court in which a petition is first filed must determine venue for a nonresident.

This bill also permits a petition for guardianship to be directed to the county in which the petitioner proposes that the proposed ward reside.

Under current law, for purposes of determining responsibility for funding the provision of social services, mental health and alcohol and other drug abuse services, and protective placements and protective services, the county of residence of individuals aged 18 or older with developmental disability or chronic mental illness in state facilities or nursing homes is determined under numerous criteria. As an exception to these criteria, the individual's county of residence is that of his or her guardian if the individual is incapable of indicating intent and has a parent or sibling who serves as his or her guardian or if the individual's guardian states that the individual is expected to return to the guardian's county of residence when the purpose of entering the state facility or nursing home has been accomplished or when needed care and services can be obtained in the guardian's county of residence. An individual, an interested person on his or her behalf, or a county may request that the Department of Health and Family Services (DHFS) make a determination of the

county of responsibility of the individual. The decision is binding on the individual and on any county that received notice of the proceeding. Currently, under the laws relating to protective placements and protective services , a petition for appointment of a guardian and for protective services or protective placement for an individual must be filed in the county of residence of the individual to be protected. Currently, under the laws relating to guardianship, all petitions or guardianship must be directed to the circuit court of the county of residence of the proposed ward or of the county in which the proposed ward is physically present. For a nonresident, the petition may be directed to the circuit court of any county in which the nonresident or his or her property may be found. The court in which the petition is first filed must determine venue and must order the record certified to the proper court in another county if it is determined that venue lies in that county. If a guardian or a ward changes residence to another county, the circuit court for the county in which the ward resides may appoint a new guardian and may order the guardianship accounts settled and the property delivered to the new guardian.

With respect to determining a county of residence, the bill clarifies that a determination may be made for adults with developmental disabilities, serious and persistent mental illnesses, degenerative brain disorders, or other like incapacities who reside in any place, other than hospital that is licensed, registered, certified or approved by DHFS or a county under certain laws. The bill also clarifies that a court that issues an order for involuntary commitment or protective placement or protective services may, after notice and an opportunity for affected counties and parties to be heard have been provided, make a specific finding of a county of residence. If an affected county or party objects, the county or party may request that DHFS make a determination and a transfer of venue may be suspended until the determination of DHFS is final. The bill modifies the criteria for determining a county of residence and authorizes a guardian to declare a county of residence under certain circumstances. The bill requires that the county that is determined to be the county of residence reimburse any other county, under specified time limits, for all social services, mental health, alcohol and other drug abuse, protective placement, and protective services care, treatment, and services.

For laws relating to protective placement or protective services and to guardianship, the bill modifies requirements for filing a petition for protective placement or protective services or guardianship to require filing either in the county of residence or, under certain circumstances, where the individual to be protected is physically present. If a person has not previously received services or has established residence in a different county after receiving and terminating services, the court may determine the individual's county of residence. The bill also requires that the court in which a petition for protective placement or protective services is first filed determine venue, after notice to and an opportunity to be heard by potentially affected counties. If an affected county or party objects to the court's determination, the court may refer the issue to DHFS for determination and may

suspend ruling on a motion for change of venue until the DHFS determination is final.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**SECTION 1.** 51.01 (4g) of the statutes is created to read:

51.01 **(4g)** "County of residence" means the county that is determined under s. 51.40 to be the county of residence.

**SECTION 2.** 51.01 (4r) of the statutes is created to read:

51.01 (4) (r) "Degenerative brain disorder" means the loss or dysfunction of brain cells to the extent that the individual is substantially impaired in his or her ability to provide adequately for his or her own care or custody or to manage adequately his or her property or financial affairs.

**SECTION 3.** 51.01 (14) of the statutes is amended to read:

51.01 **(14)** "Residence"~~, "legal residency" or "county of residence"~~ has the meaning given under s. 49.001 (6).

**History:** 1975 c. 430 ss. 11, 81; 1977 c. 26; 1977 c. 203 s. 106; 1977 c. 428; 1981 c. 79 s. 17; 1983 a. 189 s. 329 (19); 1983 a. 441; 1985 a. 29 s. 3202 (23); 1985 a. 265, 307; 1993 a. 445; 1995 a. 27; 1997 a. 47; 1999 a. 9.

**SECTION 4.** 51.01 (14t) of the statutes is created to read:

51.01 (14t) "Serious and persistent mental illness" means a mental illness that is severe in degree and persistent in duration, that causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, that may lead to an inability to maintain stable adjustment and independent functioning without long–term treatment and support, and that may be of lifelong duration. "Serious and persistent mental illness" includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling

psychiatric diagnostic categories, but does not include degenerative brain disorder or a primary diagnosis of a developmental disability or of alcohol or drug dependence.

**SECTION 5.** 51.05 (2) of the statutes is amended to read:

51.05 **(2)** ADMISSIONS AUTHORIZED BY COUNTIES. The department may not accept for admission to a mental health institute any resident person, except in an emergency, unless the county department under s. 51.42 in the county where the person has ~~legal residency~~ residence authorizes the care, as provided in s. 51.42 (3) (as). Patients who are committed to the department under s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14, 971.17, 975.06 or 980.06, admitted by the department under s. 975.17, 1977 stats., or are transferred from a secured correctional facility, a secured child caring institution or a secured group home to a state treatment facility under s. 51.35 (3) or from a jail or prison to a state treatment facility under s. 51.37 (5) are not subject to this section.

**History:** 1975 c. 430; 1977 c. 428; 1979 c. 117; 1983 a. 293; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 27; 1989 a. 31, 359; 1991 a. 315; 1993 a. 437 ss. 103 and 266; 1993 a. 479; 1995 a. 27 ss. 9126 (19), 9145 (1); 1995 a. 77, 216; 1997 a. 27, 164; 1999 a. 9, 83.

**SECTION 6.** 51.20 (13) (g) 4. of the statutes is created to read:

51.20 **(13)** (g) 4. The county department under s. 51.42 or 51.437 to which the individual is committed under par. (a) 3. retains financial responsibility for the individual if the individual voluntarily moves to another county until venue for the individual is transferred to the county in which the individual is physically present or until the individual is no longer a proper subject of continued commitment.

**SECTION 7.** 51.22 (4) of the statutes is amended to read:

51.22 **(4)** If a patient is placed in a facility authorized by a county department under s. 51.42 or 51.437 and ~~such~~ the placement is outside the jurisdiction of that county department under s. 51.42 or 51.437, the placement does not transfer the

patient's ~~legal~~ residence to the county of the facility's location while such patient is under commitment or placement.

History: 1975 c. 430; 1977 c. 428; 1983 a. 27 s. 2202 (20); 1983 a. 474; 1985 a. 176; 1989 a. 31; 2001 a. 16.

**SECTION 8.** 51.40 (title) of the statutes is amended to read:

**51.40** (title) ~~**Residence of developmentally disabled or chronically mentally ill**~~ **Determination of residence for certain adults; county of responsibility.**

History: 1987 a. 27; 1989 a. 31, 359; 1995 a. 27 s. 9126 (19).

**SECTION 9.** 51.40 (1) (e) of the statutes is amended to read:

51.40 **(1)** (e) "County of responsibility" means the county responsible for funding the provision of care, treatment, or services under this chapter or ch. 46 or 55 to an individual.

History: 1987 a. 27; 1989 a. 31, 359; 1995 a. 27 s. 9126 (19).

**SECTION 10.** 51.40 (1) (em) of the statutes is created to read:

51.40 **(1)** (em) "Facility" means a place, other than a hospital, that is licensed, registered, certified, or approved by the department or a county under ch. 50 or 51.

INSERT 9-12 H

**SECTION 11.** 51.40 (1) (h) of the statutes is repealed.

**SECTION 12.** 54.01 (1) (hm) of the statutes is created to read:

54.01 **(1)** (hm) "Other like incapacities" has the meaning given in s. 55.01 (5).

**SECTION 13.** 51.40 (1) (j) of the statutes is repealed.

**SECTION 14.** 51.40 (1) (m) of the statutes is created to read:

51.40 **(1)** (m) "Voluntary" has the meaning given in s. 49.001 (8).

**SECTION 15.** 51.40 (2) (intro.) of the statutes is amended to read:

51.40 **(2)** DETERMINATION OF COUNTY OF RESIDENCE. (intro.) ~~For purposes of determining responsibility for funding the provision of services under chs. 46, 51 and 55, the~~ The county of residence of ~~individuals~~ an individual aged 18 or older with developmental disability or ~~chronic~~ serious and persistent mental illness ~~in state~~

~~facilities or nursing homes~~ , degenerative brain disorder, or other like incapacity who is residing in a facility is the county of responsibility for the individual. The county of residence shall be determined as follows:

History: 1987 a. 27; 1989 a. 31, 359; 1995 a. 27 s. 9126 (19).

**SECTION 16.** 51.40 (2) (a) 1. of the statutes is amended to read:

51.40 **(2)** (a) 1. 'Commitment or ~~protection~~ protective placement or protective services.' If an individual is under a court order of commitment under this chapter or protective placement or protective services under s. 55.06, the individual remains a resident of the county in which he or she has residence at the time the initial commitment or initial order for protective placement or protective services is made. If the court makes no specific finding of a county of residence, the individual is a resident of the county in which the court is located. After notice, including notice to the corporation counsel of each affected county by certified mail, after opportunity to be heard has been provided to all affected counties and parties, and if there is no objection, the court may make a specific finding of a county of residence. If any affected county or party objects to the court's proposed finding, the county or party may request the department to make a determination under par. (g). Any transfer of venue may be suspended until the department's determination is final.

History: 1987 a. 27; 1989 a. 31, 359; 1995 a. 27 s. 9126 (19).

**SECTION 17.** 51.40 (2) (a) 2. of the statutes is amended to read:

51.40 **(2)** (a) 2. 'Placement by a county.' Except for the provision of emergency services under s. 51.15, 51.42 (1) (b), 51.437 (4) (c), 51.45 (11) and (12) or 55.06 (11), if a county department or an agency of a county department ~~arranges~~ places or makes arrangements for placement of the individual into a ~~state~~ facility ~~or nursing home~~, the individual is a resident of the county of that county department. Any agency of the county department is deemed to be acting on behalf of the county

department in ~~arranging~~ placing or making arrangements for placement. Placement of an individual by a county department or an agency of a county department in a facility outside the jurisdiction of the county department or agency does not transfer the individual's legal residence to the county in which the facility is located. If a resident of a county is physically present in another county and is in need of immediate care, the county in which the individual is present may provide for his or her immediate needs under s. 51.15, 51.20, 51.42 (1) (b), 51.437 (4) (c), or 51.45 (11) or (12), or ch. 54 or 55, without becoming the individual's county of residence.

History: 1987 a. 27; 1989 a. 31, 359; 1995 a. 27 s. 9126 (19).

**SECTION 18.** 51.40 (2) (b) (intro.) of the statutes is amended to read:

51.40 **(2)** (b) *Other admissions.* (intro.) If par. (a) does not apply, ~~one of the following shall apply~~ the county of residence shall be determined as follows:

History: 1987 a. 27; 1989 a. 31, 359; 1995 a. 27 s. 9126 (19).

**SECTION 19.** 51.40 (2) (b) 1. of the statutes is amended to read:

51.40 **(2)** (b) 1. 'Individuals in state facilities.' An individual who is in a state facility is a resident of the county in which he or she was a resident at the time the admission to the state facility was made. This subdivision may not be applied to change residence from a county, other than the county in which the facility is located, ~~which~~ that has accepted responsibility for or provided services to the individual ~~prior to August 1, 1987~~ before the effective date of this subdivision .... [revisor inserts date].

History: 1987 a. 27; 1989 a. 31, 359; 1995 a. 27 s. 9126 (19).

**SECTION 20.** 51.40 (2) (b) 2. (intro.) of the statutes is amended to read:

51.40 **(2)** (b) 2. 'Individuals in nursing homes.' (intro.) The following are presumptions regarding the county of residence of an individual in a nursing home that may be overcome by substantial evidence that clearly establishes other county residence:

ag. An individual in a nursing home who was admitted under s. 50.04 (2r) to the nursing home ~~on or~~ after ~~August 1, 1987~~ the effective date of this subdivision unit .... [revisor inserts date], is a resident of the county ~~which~~ that approved the admission under s. 50.04 (2r).

bg. An individual residing in a nursing home on ~~August 1, 1987~~ the effective date of this subdivision unit .... [revisor inserts date], is ~~presumed to be~~ a resident of the county in which the individual is physically present unless another county accepts the individual as a resident. ~~The presumption of residence may be overcome by substantial evidence which clearly establishes residence in another county in one of the following ways:~~

History: 1987 a. 27; 1989 a. 31, 359; 1995 a. 27 s. 9126 (19).

**SECTION 21.** 51.40 (2) (b) 2. a. of the statutes is renumbered 51.40 (2) (b) 2. cg. and amended to read:

51.40 **(2)** (b) 2. cg. ~~The~~ If the individual had an established residence in another county prior to entering the nursing home; the individual or the individual's guardian, if any, indicates an intent that the individual will return to that county when the purpose of entering the nursing home has been accomplished or when needed care and services can be obtained in ~~the other~~ that county; and the individual, when capable of indicating intent, or a guardian for the individual, has made no clearly documented expression to a court or county department of an intent to establish residence elsewhere since leaving that county, the individual is a resident of that county..

History: 1987 a. 27; 1989 a. 31, 359; 1995 a. 27 s. 9126 (19).

**SECTION 22.** 51.40 (2) (b) 2. b. of the statutes is renumbered 51.40 (2) (b) 2. dg. and amended to read:

51.40 **(2)** (b) 2. dg. ~~The~~ If the individual is incapable of indicating intent as determined by the county department, has no guardian, ordinarily resides in another county, and is expected to return to that county within one year, the individual is a resident of that county.

History: 1987 a. 27; 1989 a. 31, 359; 1995 a. 27 s. 9126 (19).

**SECTION 23.** 51.40 (2) (b) 2. c. of the statutes is renumbered 51.40 (2) (b) 2. eg. and amended to read:

51.40 **(2)** (b) 2. eg. ~~Another~~ If another county has accepted responsibility for or provided services to the individual prior to ~~August 1, 1987~~ the effective date of this subdivision unit .... [revisor inserts date], the individual is a resident of that county.

History: 1987 a. 27; 1989 a. 31, 359; 1995 a. 27 s. 9126 (19).

**SECTION 24.** 51.40 (2) (b) 2. d. of the statutes is renumbered 51.40 (2) (b) 2. fg. and amended to read:

51.40 **(2)** (b) 2. fg. ~~The~~ If the individual is incapable of indicating intent; the individual was living in another county outside of a nursing home or state facility on ~~December 1, 1982~~ the effective date of this subdivision unit .... [revisor inserts date], or under circumstances ~~which~~ that established residence in that county after ~~December 1, 1982~~ the effective date of this subdivision unit .... [revisor inserts date]; and that county was the last county in which the individual had residence while living outside of a nursing home or state facility, the individual is a resident of that county.

History: 1987 a. 27; 1989 a. 31, 359; 1995 a. 27 s. 9126 (19).

**SECTION 25.** 51.40 (2) (b) 2. g. of the statutes is created to read:

51.40 **(2)** (b) 2. g. If subd. 2. ag. to fg. does not apply, an individual who is incapable of indicating intent and is residing in a facility is a resident of the county in which the individual resided before admittance to the facility.

**SECTION 26.** 51.40 (2) (f) of the statutes is repealed and recreated to read:

51.40 **(2)** (f) *Guardian's authority to declare county of residence.* A guardian may declare any of the following, under any of the following conditions:

1. The ward is a resident of the guardian's county of residence, if pars. (a) and (b) do not apply, if the guardian's ward is in a facility and is incapable of indicating intent, and if the guardian is a resident of the county in which the facility is located or states in writing that the ward is expected to return to the guardian's county of residence when the purpose of entering the facility has been accomplished or when needed care and services can be obtained in the guardian's county of residence.

2. The ward is a resident of the county in which the ward is physically present, if pars. (a) and (b) do not apply and if all of the following apply:

a. The ward's presence in the county is voluntary.

b. There is no current order under ch. 55 in effect with respect to the ward, and the ward is not under an involuntary commitment order to the department of corrections or to a county other than the county in which the ward in physically present.

c. The ward is living in a place of fixed habitation.

d. The guardian states in writing that it is the ward's intent to remain in the county for the foreseeable future.

3. The ward is a resident of the county specified by the guardian, regardless if a previous determination of county of residence has been made, notwithstanding pars. (a) and (b) for good cause shown, if, in the ward's best interest, the guardian files with the probate court having jurisdiction of the guardianship and protective placement a written statement declaring the ward's domiciliary intent, subject to court approval, and if notice and opportunity to be heard are provided to all affected

counties and parties. Notice under this subdivision shall be sent to the corporation counsel of each affected county by certified mail.

**SECTION 27.** 51.40 (2) (g) 1. of the statutes is amended to read:

51.40 **(2)** (g) 1. An individual, an interested person on behalf of the individual, or any county may request that the department make a determination of the county of responsibility of the individual. Any motion for change of venue pending before the court of jurisdiction may be stayed until the determination under this paragraph is final. Within 10 days after receiving the request, the department shall provide written notice to the individual~~,~~; to the individual's guardian, guardian ad litem, and counsel, if any~~,~~; to the individual's immediate family, if they can be located; and to all potentially responsible counties that a determination of county of responsibility shall be made and that written information and comments may be submitted within 30 days after the date on which the notice is sent.

History: 1987 a. 27; 1989 a. 31, 359; 1995 a. 27 s. 9126 (19).

**SECTION 28.** 51.40 (2) (g) 6. of the statutes is created to read:

51.40 **(2)** (g) 6. The county that is determined to be the county of responsibility shall reimburse any other county for all care, treatment, and services provided by the other county to the individual under ch. 46, 51, or 55. Full reimbursement by the county that is determined to be the county of responsibility shall be made within 120 days after the date of the department's determination of the county of responsibility or within 120 days after the date of the outcome of any appeal of the department's determination that is brought under ch. 227, or by a date or under a schedule of 2 or more payments that is agreed to by both counties.

**54.30 Jurisdiction and venue.**

**(3)** (b) 1. An interested person shall file a petition for change of venue in the county in which venue for the guardianship currently lies.

2. The person filing the petition under subd. 1. shall give notice to the corporation counsel of the county in which venue for the guardianship currently lies and to the register in probate and corporation counsel for the county to which change of venue is sought.

3. If no objection to the change of venue is made within 15 days after the date on which notice is given under subd. 2., the circuit court of the county in which venue for the guardianship currently lies may enter an order changing venue. If objection to the change of venue is made within 15 days after the date on which notice is given under subd. 2., the circuit court of the county in which venue for the guardianship currently lies shall set a date for a hearing within 7 days after the objection is made and shall give notice of the hearing to the corporation counsel of that county and to the corporation counsel and register in probate of the county to which change of venue is sought.

INSERT 53-9 DA

**SECTION 29.** 55.06 (1) (a) of the statutes is amended to read:

55.06 **(1)** (a) The ~~board designated under s. 55.02~~ department, the county department or an agency ~~designated by it~~ with which the county department contracts under s. 55.02 (2), a guardian, or an interested person may file a petition for appointment of a guardian and for protective services or protective placement for the individual. The department shall provide for a schedule of reimbursement for the cost of ~~such~~ the proceedings based upon the ability to pay of the proposed ward or ~~person~~ individual to be protected.

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**History:** 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366; 1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 237, 283; 2001 a. 109; 2003 a. 33, 326.

**SECTION 30.** 55.06 (3) (c) of the statutes is amended to read:

55.06 **(3)** (c) ~~The~~ A petition under sub. (1) shall be filed in the county of residence of the ~~person~~ individual to be protected, as determined under s. 51.40 or by the individual's guardian or where the individual is physically present due to circumstances including those specified under s. 51.22 (4). If an individual has not received services under ch. 46, 51, or 55 or if an individual has received services under ch. 46, 51, or 55 that have been terminated and has established residence in a county other than that in which the individual resided when the services were received, the court may determine the individual's county of residence. The county of residence under this paragraph is the county of responsibility.

**History:** 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393, 421, 422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26, 299, 428; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143, 3202 (23); 1987 a. 366; 1989 a. 31, 359; 1991 a. 269; 1993 a. 187, 451; 1995 a. 27, 92; 1997 a. 237, 283; 2001 a. 109; 2003 a. 33, 326.

**SECTION 31.** 55.06 (3) (d) of the statutes is created to read:

55.06 **(3)** (d) The court in which a petition is first filed under par. (c) shall determine venue. The court shall direct that proper notice be given to any potentially responsible or affected county. Proper notice is given to a potentially responsible or affected county if written notice of the proceeding is sent by certified mail to the county's clerk and corporation counsel. After all potentially responsible or affected counties and parties have been given an opportunity to be heard, the court shall determine that venue lies in the county in which the petition is filed under par. (c) or in another county, as appropriate. If the court determines that venue lies in another county, the court shall order the entire record certified to the proper court. A court in which a subsequent petition is filed shall, upon being satisfied of an earlier filing in another court, summarily dismiss the subsequent petition. If any potentially responsible or affected county or party objects to the court's finding of venue, the court may refer the issue to the department for a determination of the